

**ACT UP**

AIDS Coalition to Unleash Power

Civil Disobedience Training

# Demonstrator's Manual

The following pages had been taken from the Mass Defense Committee (NYC chapter of the National Lawyer's Guild). Additional information can be found at [www.nlg.org](http://www.nlg.org)

Demonstrations have played an important part of this country's history. Even before there was a United States there were demonstrations. While the tradition of protest is supported by the constitution, the law also says that the police have the right to regulate demonstrations to maintain public order. Due to the conflicting rights of the demonstrator and the police, it is not always clear what is legal and what is not legal. However, this manual gives you many general rules and considerations to help you make the best possible decisions in demonstrating.

\* **Planning the Demonstration**

\* **At the Demonstration**

\* **You Are Under Arrest**

\* **In Court**

Please keep in mind that the specific laws and procedures cited are from New York State -- if you do not live in New York the laws will vary. For the best possible information

for your particular situation, contact an attorney or call us,  
we may be able to recommend one.

# Planning the Demonstration

Most groups do at least some planning prior to their demonstration. In addition to deciding the choreography of the demonstration, your group should plan whether to obtain a police permit, whether and how to include a "civil disobedience", and other practical matters. If you are unsure about your rights it's a good idea to discuss your plans with an attorney. (An attorney from the Mass Defense Committee is usually available to do this.)

## **Topics Below**

- \* Deciding whether to obtain a permit
- \* Bring identification, not contraband
- \* Civil disobedience and who should avoid it
- \* Usual civil disobedience charges and release from precinct
- \* Be aware of "going through the system"
- \* Designate a civil disobedience monitor

## **Deciding whether to obtain a permit**

Permits should be obtained if the demonstration is going to involve a bullhorn or any other electronically amplified sound. A permit should be considered for any demonstration that will be large (more than 100 persons

or so) or will move from one place to another. If a permit is not obtained, the police, who will inevitably appear, may drastically curtail the action or prohibit it altogether. Obviously the issuance of a permit alerts the police to the demonstration and guarantees their presence and usually their advance placement of wooden barricades at the demonstration site (where the police want them). However, even if a permit is not obtained, the police will appear anyway and although they may allow the demonstration to continue, they may be more intolerant than they would otherwise have been. If a permit is denied, we recommend that the group call an attorney. She or he may be able to obtain the permit either by re-requesting it at the precinct or by going to court.

## **Bring identification, not contraband**

Persons planning on being arrested should have police-acceptable identification. After the arrest the police transport the arrestee to a police precinct for processing. Unless the charge is a felony, the demonstrator will probably be released as long as her or his identification gives the police reasonable assurance that they know who the person is and where she or he lives. The best identification is a picture driver's license, but most official-looking identifications issued by an agency, organization or company will usually do. The purpose of learning the address is that, in the event that the demonstrator does not appear in court on the scheduled court date, the authorities could find him or her if they tried (which they would probably never do for a demonstration arrest). Persons planning on being arrested will be at least superficially searched. If the police discover illegal drugs or anything else illegal they will probably not release the person and will add on additional charges.

## **Civil disobedience and who should avoid it**

Originally civil disobedience meant disobeying laws one felt were fundamentally wrong; it has come to mean

disobeying any law in protest of something. In planning a civil disobedience it is most important that those planning to be arrested be made aware of the legal and practical consequences of arrest (see below). They should learn the probable arrest charges the police will give and the probable outcomes they will receive in court. Potential arrestees should also be taught how to minimize the risks of extended police custody by avoiding certain charges, carrying reliable identification and having support at the police precinct.

Persons with outstanding warrants are advised not to get arrested because the warrant may cause the police not to release them from the police precinct. Also, arrest presents risks to non-citizens. While the police do not yet specifically screen arrested persons for immigration issues or automatically communicate with the Immigration and Naturalization Service, non-citizens are required to explain arrests (not just convictions) on many INS applications. Similarly, persons who later may want to apply for jobs involving the government, security or child care may be investigated or asked about arrests, not just convictions, and therefore should weigh participation in a CD very carefully.

## **Usual civil disobedience charges and release from the precinct**

The most common charges against demonstrators are Disorderly Conduct and Trespass. Basically Disorderly Conduct means about what it sounds like it means -- acting in a manner the police find disorderly -- and Trespass means being present on property without the permission of the rightful custodian of the property. These charges are both "violations" meaning they are not crimes and are about as serious as a moving traffic violation. For these offenses the arrestee is almost always released from the police precinct after being given a ticket informing him or her where and when to go to court. The next most common charge is Resisting Arrest, which means that the arrestee allegedly exerted force to prevent the police from effecting arrest. (A demonstrator

might be given this charge if a police officer uses unreasonable force since the officer wants to establish an excuse for using force.) This offense is a crime, an "A" misdemeanor (and therefore affords the demonstrator to the right to a jury trial). A person is usually released from the precinct with this charge but has a greater chance of being held until court than the above charges.

The courts do not agree on whether or not "going limp" and forcing police to pick up a demonstrator constitutes resisting arrest. Therefore, while persons who go limp risk a Resisting Arrest conviction, there is also legal authority that that is not sufficient conduct to prove Resisting Arrest.

The next most common charge is Riot in the second degree which relates to urging 4 or more persons to to cause property damage or personal injury, or participating in the damage or injury. If there are more than 10 persons involved and there is an injury (including injury to the a police person) or damage, the charge will be a felony - Riot in the first degree - and the arrestee will not be released from the precinct.

## **Be aware of "going through the system"**

Those arrested persons not released at the precinct go "through the system", meaning that they remain in police custody up to the time 24 to 72 hours later when they see a judge in court. The journey involves at least one police precinct, a place called Central Booking (a pre-court clearing house for all the county's arrestees), a mass pen in the court building, and finally a court "pen" where the arrestee will be allowed to speak to an attorney. (All persons are assigned an attorney unless they already have one.) The judge decides whether to release or detain the arrestee until the next court date; most demonstrator defendants are released. The through-the-system experience is one to be avoided. (For example, see Tom Wolfe's only slightly exaggerated description in the novel *Bonfire of the Vanities*.)

For additional information about the post-arrest process, read "**You're Under Arrest**" by Ronald Kuby and William Kunstler.

## **Designate a civil disobedience monitor**

Whenever arrests are expected, the demonstration group should appoint a person to monitor the arrests. This person should make sure the arrestees have good identification, keep of list of the persons arrested and, if possible, go to the police precinct to make sure things go well there. The monitor should bring paper and pencil to the demonstration and be prepared to make notes. If there is police brutality, the monitor should record the incidents, the names of witnesses and the names of the officers involved. A camera is also helpful for such events.

# At the Demonstration

## Topics Below

- \* Demonstrator Rights, Police Rights
- \* New York Demonstrations
- \* Civil Disobedience and Arrest

## Demonstrator Rights, Police Rights

The First Amendment permits speech, however controversial, in "public forums" (streets, sidewalks, parks, plazas and, in contemporary times, shopping malls). The protected expression includes "symbolic speech" such as wearing masks, candlelight vigils, and, of course, flag-burning.

While the government and the police may not restrict the content of the speech (including, for example, vulgarities directed at the police), they may impose reasonable "time, place and manner" restrictions on speech. Thus, for example, the police may control the demonstration to keep it from endangering public safety or order. And in New York City there are ordinances against demonstrations too close to churches, consulates, hospital and certain other buildings.

Generally a speaker cannot be prevented from provoking or exciting a crowd. However, if a speaker provokes a crowd to the point of causing property damage or personal injury (Incitement to Riot) or of another violation



of the law, she or he can and certainly will be stopped by the police.

Potential demonstrators often ask "can the police do this...." referring to a particular type of restriction on demonstrating. The correct legal answer often boils down to whether or not the restriction is a reasonable time, place or manner restriction under the circumstances -- something a judge might have to decide later on if there happens to be a trial on the matter. However, the practical answer to the potential demonstrator's hypothetical is that if the police feel like it, they can and will do what they want and worry about the legal consequences later.

If a demonstrator believes her or his speech rights are being violated by a police officer, the matter should be brought to the attention of the legal observer, if there is one, or the demonstration organizer. If those options are not available, it may help to politely but firmly request to speak to the officer in charge. Often, however, that is the officer who ordered the action in the first place. Arguing with the particular police officer will rarely change the officer's mind. Refusing to obey the officer will usually result in an arrest.

## **New York Demonstrations**

There is no right or wrong way to demonstrate -- the demo should be conducted in a way to best highlight the political issues involved. However, in New York City the police appear to be increasingly permitting less variety and spontaneity in demonstrations. If the demonstration is on a city sidewalk the police will usually construct a pen with barricades within which they will confine stationary demonstrators. Often these pens are a block or more from the actual site being protested. Demonstrators that march will be required to stay on the sidewalk and not completely block the sidewalk. The courts will uphold

most partial restrictions on the right to demonstrate in the name of serving the public's right to such things such as the free flow of pedestrian and vehicular traffic, and safety.

Most demonstrations are stationary, within the police barricades. Demonstrators may hold signs, but in New York City the police prohibit signs on wooden sticks, requiring that the signs be held up by cardboard tubes. Sound devices are generally allowed only with a sound permit. Chanting is permitted but if the demonstration is close to a hospital, consulate or government building the police will probably move it away so the occupants are not disturbed.

## **Civil Disobedience and Arrest**

The usual civil disobedience features members of the demonstration blocking building entrances or traffic and being arrested. Typically, shortly after the cd begins, the police officer in charge will stand in front of the demonstrators and give a warning to cease the action while the other officers, brandishing handcuffs, encircle the demonstrators. When the demonstrators persist, the arrests begin and the arrestees are taken to police vans for transport to a precinct.

A member of the group should monitor the arrests, maintain a list of the persons arrested, take note of any unreasonable force by the police, and be prepared to go to the police precinct to ensure the arrestees' release.

In transport to, and at the precinct, arrestees should refrain from discussing the demonstration with the police. While persons arrested should be cooperative about giving their name, address, job, and like information for the purpose of securing their release, there is nothing to be gained from discussing the incident. If you do it, as they say on TV, everything you say can and will be used

against you in court. (See "**You're Under Arrest**" by Ronald Kuby and William Kunstler.)

At the precinct the arrestees are written up and usually released. If a person is charged with resisting arrests, fingerprints may be taken, which slows the process considerably since it takes approximately three hours for the results of the fingerprint search to be returned to the precinct. An arrestee may or may not be given a phone call. If there are any felony charges, the demonstrator will not be released. Persons released receive either a "Summons" (which looks like a parking ticket) or a "DAT" (Desk Appearance Ticket) which state the date and place of the court appearance for the charge. In New York the charges cannot be resolved at the precinct.

# You are Under Arrest

by Ronald Kuby and William Kunstler

You are standing on Avenue A shouting "No Housing, No Peace." Suddenly, some huge ex-football player from Suffolk County jumps you from behind and slams your face into the concrete. He is wearing a blue outfit, a gun, and is putting handcuffs on you. What has happened? You are under arrest!

You are under arrest when the police, by their words (Halt or I'll shoot!) or their conduct (grabbing your arms and hurling you into a paddy wagon <sup>1</sup>) make it clear that you are not free to leave. If you have any doubt as to whether you are under arrest, ask! (Assuming your mouth is not full of blood and teeth.)

The police do not have to pronounce any magic words for you to be under arrest. And get this--contrary to the teaching of a generation of TV--the police do not have to "read you your rights." Most people (and many criminals) still believe that a police failure to recite the Miranda warnings means the case has to be thrown out. Not true. There is nothing sadder than the look on the face of an otherwise hardened killer when you break this news to him. (Well, almost nothing sadder.)

A brief digression: (Like many myths, the "he did not read me my rights so I go free" is one that can trace its origins to something in objective reality. Back in 1966, the Supreme Court held that the failure of the police to tell a suspect that he had the right to remain silent, and to a free lawyer before being questioned, meant that nothing the suspect said could be used against him. So the Court put a crimp in the time-honored police practice of beating a confession out of a suspect. Many suspects had to be released because the only evidence against them was a confession extracted through torture. Eventually, many police learned how to get evidence without hitting people (although they still beat suspects just for fun). This other evidence--eyewitness statements that you pulled the

trigger, your blood-stained clothing, the recently fired gun, etc.--has nothing to do with you making a statement and nothing to do with whether you were read your rights.)

Ok. So you are in the squad car, going to the police station. As a general rule, the best policy is for you to keep your mouth shut. Do try to avoid saying dumb things like "I didn't mean to do it; everyone else was doing it" and "I just meant to rob the guy, I didn't know that Joe would shoot him." Do not try to talk yourself out of the arrest. The only thing that you can influence at this point is whether you go "through the system".

If you are charged with an E felony or lower (including misdemeanors) the police get to decide whether they will issue you a Summons / Desk Appearance Ticket (DAT) **(click here to see image)** and release you, or whether to put you through the system, forcing you to spend at least 24 and perhaps as many as 72 hours in various dirty holding cells as you wend your way through the intestines of the booking system, only to be dumped, looking and smelling like a turd, into a courtroom.

**Your chances of getting a Summons/DAT are increased if you:**

- 1) Cooperate with arresting officers by providing them with background information and valid identification. This is the only time when it is useful to talk with the cops. If you cannot prove your identity and residence, you will be fingerprinted and placed through the system. Homeless people are regularly put through the system, even for the most minor offenses. Homeless people should give arresting officers some real, verifiable address, even the name of a friend who will confirm that they stay there.
- 2) Arrive "clean". After an arrest, you will be searched. Possession of weapons or drugs will result in your being put through the system.
- 3) Commit a relatively minor infraction. Sitting down in the street and refusing to move, blocking the entrance to a building, and related conduct generally is treated by a summons. Resisting arrest by going limp is usually treated

by a DAT. Assault and property destruction will normally result in your being put through the system.

4) Have no outstanding warrants. That court date you missed six months ago (Oh shit! That arrest?) has grown into a bench warrant and will result in your being put through the system.

**Lying to the police by showing them false identification is stupid and illegal.** It is a crime more serious than the one you are trying to get out of. If they take your fingerprints and you have been printed before under another name, you're in trouble.

Sometimes, a lawyer or responsible adult calling or showing up at the precinct can influence the police to release you rather than put you through the system. (That is why your lawyers usually do not stand there during demonstrations and call the police "fucking pigs.")

If the police use summons procedures, you will be taken to a precinct house. On the Lower East Side, it will be the Seventh Precinct at 26 Pitt Street or the Ninth Precinct at 321 E. 5th Street. A police officer will ask you background questions. You will then be issued a pink slip of paper with a court date, usually a month from the arrest date, and place, usually at 346 Broadway. Save this paper. You will then be released. If you do not show up within 30 days after your date, a warrant will be issued for your arrest.

Persons arrested at the same time may be given different court dates--a tactic often used to prevent mass demonstrations at the courthouse. Because of the 30-day rule, you have some flexibility in scheduling your court appearance. Like everything else, going to court is more fun with your friends.

DAT procedure is similar, except that you are often fingerprinted at the station and the prints are faxed off for a warrant check. This usually takes about 3 hours. You are given an 8 1/2 x 11 sheet of paper with a court date and a room number, usually at 100 Centre Street. Unlike the summons, if you do not show up on the date given, a warrant will be issued for your arrest.

If the police put you through the system, you will first go to the precinct for a few hours. From there, you will be taken to Central Booking, at 1 Police Plaza, and you will be

photographed (mug shot) and fingerprinted. You have no right to refuse these procedures, and you will not be released until they are completed. You will also be interviewed by a representative from "pretrial services". The result of this interview will be used by the judge in determining whether you should be released on your own promise to appear (release on own recognizance, or ROR). It is important to give them the name and telephone number of someone who can verify the information that you provide. Following this process, which may take up to five hours, you will be taken to one of the precincts in Manhattan and held in a small cell for as long as forty-eight hours. They will take your belt and shoelaces away (really!) while you are in the holding cell. Finally, you will be brought to court at 100 Centre Street, where you will wait in the basement in another cell, as long as overnight. You will be brought "upstairs" to yet another cell, where you will wait a bit longer before getting to see a judge. Just before you see the judge, you will see an attorney, either Legal Aid or from your defense committee.

**A trip through the system is no fun, but you can do it.** Bring cigarettes, even if you do not smoke. They are the jail system equivalent of barter. A toothbrush is also a handy and useful item of personal hygiene to bring with you.

Once you are in the system, the only way out is to wait until you get to see a judge. Be prepared for the wait. No magazines are furnished. Make sure that your personal matters are taken care of. The jail guards do not care about your pets, children, or you. Persons who require daily doses of medication will have their medication confiscated and will not be able to persuade anyone to return it. Yes, there is a court decision requiring you to be produced before a judge within 24 hours or released. No, it does not help you. In fact, it hurts you because the remedy for the delay is release. The serious felonies are processed first, to prevent them from being released. Since you are getting out anyway, unless you shot the President, you often go to the end of the line. The Catch-22 for you is that a judge will order you released after 24 hours but it can take 72 hours to see the judge.

**DISCLAIMER: The advice given here is meant as a general statement of the law, and should not substitute your spending a pile of money on a real flesh and blood lawyer.**

<sup>1</sup> It should be noted that the term "paddy wagon" is archaic and considered derogatory by many people and Irish Americans. This term is no longer used -- it remains in this document with this enlightened note.



# In Court

In New York demonstrator arrests end up in one of three courts: 346 Broadway (summons cases), 100 Centre St. (all felony and most DAT cases) or the Midtown Community Court (minor arrests concerning demonstrations in the Times Square area).

## **Topics Below**

- \* 346 Broadway (at Leonard St.), also known as the Summons Part
- \* 100 Centre St. (at Leonard St.)
- \* Midtown Community Court (314 W. 54th St.)

## **The following are the main in-court events demonstrators need to know about.**

- \* Motions to dismiss
- \* The ACD
- \* Trials
- \* Guilty Pleas
- \* Sentence
- \* Sealing
- \* Summary of the Judicial Process

---

**346 Broadway (at Leonard St.), also known as the Summons Part**

This court gives assembly line service to Manhattan's minor offenders. At their first appearance defendants turn in their summonses at the clerk's office and directed to a courtroom in which to wait for the judge. The courtroom is run, rather strictly, by court officers. There is no prosecutor present (but the judge is often prosecution oriented).

Defendants in the Summons Part are asked whether they wish to plead guilty or go to trial. (See below concerning court strategy). Those wishing to go to trial are given a new court date. (The arresting police officers are not notified to appear until after the arrestee appears in court on the next date and repeats his or her desire to go to trial.) Persons pleading guilty are fined a minimum of \$45 (the "mandatory" surcharge) and given time to pay if necessary. The arrestee should try obtain a dismissal or an ACD.

### **100 Centre St. (at Leonard St.)**

This is the main Manhattan criminal courthouse which means, among other things, that all visitors go through a long metal detector line before entering the building. The DAT part is currently on the south end of the 1st floor. Upon checking in the defendant will be informed whether or not the charges are "ready"; if they are not, the defendant is told to go home and wait for a notice in the mail. If the charges are ready, the arrestee will be instructed to wait in the courtroom. If she or he has an attorney the attorney will obtain the written charges; if not, a court-appointed attorney will eventually introduce him or herself as the attorney. At the first appearance one should request a dismissal or an ACD, and then decide whether to plead guilty or to proceed towards a trial (pleading not-guilty). Proceeding towards trial does not necessarily mean there will be a trial -- for example, a dismissal, an ACD or a better plea offer may become available on a later court date. See below for details regarding court strategy.

### **Midtown Community Court (314 W. 54th St.)**

This new courtroom was partially funded by the Times Square businesses in the hope that it could accelerate the judicial process against those who are perceived as a blight on the area (i.e. unlicensed vendors, urinators, etc.) Recently someone decided that demonstrators fit the category. However, despite the intentions, cases which are not resolved at the first appearance are simply transferred to 100 Centre St. and end up taking at least as long as any other case. As advised above, when the case is called, the defendant should try for a dismissal or an ACD, failing which he or she will decide between a plea offer or the path towards trial ("not-guilty").

### **Motions to dismiss**

A dismissal is the termination of the defendant's charges without any finding a guilt.

One primary basis for requesting the dismissal of the charges is that the charging document is defective. In the Summons Part, this most often involves the police officer's failure to sign the summons or, on a disorderly conduct summons, to allege the defendant's intention to block pedestrians or vehicular traffic. (see People v. Tarka) In non-Summons Part cases, motions to dismiss based on a defective complaint usually involve facial insufficiency, or the prosecutor's failure to allege sufficient facts to satisfy the elements of the offense charged. In the summons part the judge should inspect the summons for sufficiency, in the DAT parts the attorney should do so.

The second primary basis for a dismissal is justification--that the purpose of the arrestee's act was to prevent a greater harm. This defense is part of the New York State Law Penal Law (Section 35.05).

A third, related, ground is "the interests of justice"--that the issue related to the demonstration or some other fact related to the case (sometimes the police officer's brutality in the arrest) demands that the case be dismissed. See sample of written motion to dismiss in the interests of justice.

While motions to dismiss may not often be granted, they should be made if there is a grounds.

## **The ACD**

ACD stands for Adjournment in Contemplation of Dismissal. An agreement to an ACD is almost as good as an outright dismissal. The case is adjourned for six months, after which it is dismissed and sealed. There is no admission of guilt or finding of any guilt, and the defendant does not have to appear in court on the 6-months date.

Technically a judge can vacate an ACD during the 6-month period if the ACD "no longer serves the interests of justice". However this rarely happens. What happens if the demonstrator is arrested again during the six-month period? Almost always, nothing. The main reason for this is that the judge in the subsequent arrest case will not be aware of the ACD (unless the demonstrator was fingerprinted for both arrests, in which case the judge will have a current record which will the prior case; this would be unusual for demonstration arrests). Secondly, even if the judge does know about the ACD case, he or she would be unlikely to reopen it because of another arrest (why make more work for the court system?). Instead the judge probably just will not agree to another ACD. And even in the extremely unlikely event that a judge did revoke an ACD, the demonstrator would only be in the same position she or he was in when the ACD was granted, which is that there has been no guilty plea and there can then be a plea negotiation or the case can proceed to trial. In short, very little is risked with an ACD.

Increasingly prosecutors will agree to an ACD only if it is conditioned on the defendant serving "community service" (i.e. cleaning up litter for the Parks Department), usually for 1 or 2 days. Agreeing to this condition is not an admission of guilt but it is obviously inconvenient.

There is one situation in which an ACD should not be agreed to and that is when the defendant intends to bring a civil rights lawsuit based on "malicious prosecution" or "false arrest". Appellate courts have held that the defendant's agreement to an ACD gives sufficient legitimacy to the prosecution to bar a subsequent suit charging malicious prosecution, and have implied the

same may be true with respect to false arrest. If you are considering a lawsuit on these grounds you should consult with an attorney before agreeing to an ACD. An ACD does not preclude other civil suit claims such as assault.

## **Trials**

If a motion to dismiss has been denied, and a request for an ACD has also been denied, the case will proceed towards a guilty plea or a trial. All persons have the right to a trial. In the Summons Part that trial will usually take place, if the officer chooses to appear, on the second or third appearance; in other courts it will take even longer. The right to a trial includes the rights to a speedy trial, to make motions for necessary discovery material, to raise all appropriate defenses, to call witnesses and other rights. Since it is not possible to discuss these rights in this writing, an arrestee who wishes to fully exercise all rights should consult with an attorney or request one from the court.

The basic structure of a trial is that the police witness(es) testifies first, and the defendant, if he or she chooses to testify, and his or her witnesses, if any, testify second. The length of a trial varies depending on which court it is in, the number of witnesses there are, and the complexity of the case. Most trials in the Summons Part take only the time it takes a police officer and the demonstrator to tell the judge what happened -- usually a matter of minutes. The average non-Summons Part case takes one or two days but a complicated case can take much longer. The demonstrator defendant, as any other defendant, has a right to a trial by jury for any felony charge or a Class A misdemeanor, such as Resisting Arrest. Since most demonstrators are charged with minor charges, their cases are tried before a judge, not a jury. The judge will usually not be very interested in the reason for the demonstration (but see the Refuse & Resist Homepage concerning producing a political trial) and will be under pressure from her superiors to rush through all cases as quickly as possible.

Often the demonstrator defendant will not be permitted to raise the political issues involved in the demonstration at

the trial. While the issues might be relevant if there is a "necessity" or "interests of justice" defense, if not, the judge will limit the issues to whether or not the defendant was disorderly or trespassed, etc.

In all trials, the relevant legal standard for guilt or non-guilt is whether the charges against the defendant have been proven beyond a reasonable doubt. If the trier of fact (as stated above, usually a judge) finds the charges have not been proven, the charges will be dismissed and sealed. If the judge finds the charges proven, he or she must sentence the defendant.

Since most demonstration cases do not go to trial there is no typical demonstration trial. What can be anticipated about trials however is that a police officer will testify that the demonstrators trespassed or were disorderly and failed to desist when the police asked them to. At that point in the trial, unless a demonstrator has strong evidence that the officer is lying or an even stronger justification or other defense, a judge is likely to find the demonstrator guilty. For one thing, nearly anything can be considered disorderly conduct; for another thing, judges are reluctant to decide that a police officer has lied, especially when the officer is standing in front of the judge in court. Thus, success at trial may depend on the ability of the defendant, or the defendant's attorney to overcome or avoid these two judicial tendencies.

Guilt after trial subjects the arrestee to the potential penalties mentioned below (Sentence). Demonstrators who decide to go to trial and are found guilty generally receive lenient sentences (i.e. a conditional discharge) but at minimum are assessed the "Mandatory Surcharge" (\$45).

### **Guilty pleas**

If the judge has denied a motion to dismiss and is not inclined to grant an ACD in the case, the demonstrator defendant will have to decide whether to plead guilty or proceed towards trial. If the defendant is leaning towards pleading guilty, the defendant or the defendant's lawyer should always try to find out from the judge what consideration the court will give the defendant for

pleading guilty. Since the defendant will be giving up the constitutional right of forcing the prosecution or police to prove guilt beyond a reasonable doubt (which takes up the judge's time), the defendant will be in a position to get a break for giving the court a break. If the defendant is charged with a misdemeanor, usually the judge (and the prosecutor if one is present) will permit the charges to be reduced to a violation (normally disorderly conduct) and offer a favorable sentence to encourage a plea of guilty. As is stated above, a finding of guilt to a violation is a non-criminal adjudication, and is about as serious as a moving traffic violation. If the charge is already only a violation, there is no lower charge, so the court should offer a low fine or no fine (other than the mandatory surcharge). If the defendant understands the court's offer and wants to accept it, he or she can plead guilty. This is usually accomplished by simply communicating that fact to the judge. Sometimes, the judge may ask the defendant to explain what she or he did for which she or he is pleading guilty.

### **Sentence**

After a finding of guilt, whether after trial or plea, the court must set a sentence. The judge's options include incarceration, probation, conditional discharge, unconditional discharge, a fine, or a combination of these options. There is a mandatory court fee of \$45 against all persons found guilty of anything, unless the defendant is determined to be indigent.

In demonstration cases the sentence most often imposed is a conditional discharge with a fine of \$55 (\$45 of which is for the mandatory surcharge) or so. A conditional discharge is a one-year period during which the case is not sealed and, during which, theoretically, a future violation of the law could constitute the grounds for a resentencing (but almost never does). Conditional discharges are sometimes called an unsupervised probation.

Defendants can agree (but cannot be forced) to perform community service as an alternative to other sentences, and increasingly judges and prosecutors are asking for

that agreement. Usually the service involves 1 or 2 days of picking up litter for the Parks Department or the Transit Authority, but the judge and the prosecutor will occasionally agree to service with charitable organizations such as the Gay Men's Health Crisis.

### **Sealing**

After all dispositions of a case which are "favorable to the defendant" the case will be sealed. "Favorable to the defendant" includes dismissal and, importantly, non-criminal findings of guilt (i.e. violations such as disorderly conduct and simple trespass). Sealing involves the physical and electronic elimination of the case. The court papers are physically stapled shut and stored in a designated area. The New York State computer entry for the case, if there is one (there is one if the defendant was fingerprinted upon arrest), is eliminated, and the defendant's original fingerprint card, if there is one, is returned to the defendant (the copies of the card are destroyed).

When the court orders a conditional discharge as the sentence, the sealing takes place after the one-year period. When a fine is ordered, and on other occasions, the judge may postpone sealing for short period of time. Sealing, like any other bureaucratic process, is subject to the mistakes of those who participate in the process. If the sealing is sufficiently important, defendants (or their attorneys) should investigate whether the sealing took effect. Several months after the sealing was supposed to have occurred, the defendant can go to police headquarter (in Manhattan, at One Police Plaza, on Chambers St., east of Centre St.), and have a fingerprint run done. If the sealing was properly done, the fingerprint search will not "discover" the arrest in question. Sealing does not hide the particular arrest from everyone. Government employers and certain private employers, such as foster care agencies, have access to sealed records.

### **Summary of the Judicial Process**



For non-felony charges the defendant should attempt to have the case dismissed, then attempt to get an ACD and, failing these, determine whether or not to go to trial. If a plea is given the defendant should drive a hard bargain. If a trial is had, even if is lost, most demonstrators will not be be harshly sentenced.

If there are felony charges (such as Assault on a Police Officer or Riot), the court will always assign an attorney and the charges must be taken seriously.